
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Greeley Broadcasting Corporation)	File Number: EB-08-DV-0082
)	
Licensee of Station KGRE-AM)	NAL/Acct. No. 200832800005
Antenna Structure Registrant)	FRN: 0005078597
Greeley, Colorado)	
Facility ID # 33821)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 29, 2008

By the District Director, Denver Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Greeley Broadcasting Corporation ("Greeley Broadcasting"), licensee of station KGRE-AM in Greeley, Colorado, apparently willfully and repeatedly violated Section 73.49 of the Commission's Rules ("Rules")¹ by failing to enclose the KGRE-AM antenna structure, a tower with radio frequency potential at the base, with an effective locked fence or other enclosure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Greeley Broadcasting is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On March 14, 2008, at 3:15 p.m., agents from the Enforcement Bureau's Denver Office conducted an inspection of an AM broadcast tower located at approximately 40° 26' 15" north latitude and 104° 43' 27" west longitude in Greeley, Colorado. Close observation revealed that the lock to the gate for the fenced enclosure was not engaged. The agents found the lock stuck in the open position and were unable to close it. As a result the agents were able to gain access to the structure, a series-fed antenna with an insulated base. The agents observed that there were residences within 250 yards of the tower and there was no perimeter fencing erected around the property to keep the public from approaching the structure. A search of the Commission's database on-scene indicated that KGRE-AM, licensed to Greeley Broadcasting, was broadcasting from the structure.

3. Upon completion of the site inspection the Denver agents traveled to the KGRE-AM main studio in Greeley, Colorado. When they arrived at the studio at approximately 4:20 p.m., an oral warning was issued regarding the base fencing violation to the staff member present. The staffer then contacted the president of Greeley Broadcasting by phone to talk with the agents. The agents conducted a telephone interview with the executive, again issuing an oral warning for the non-secured base fence. During the

¹ 47 C.F.R. § 73.49.

² 47 U.S.C. § 503(b).

interview, the executive acknowledged that the condition of the lock was a serious safety issue and he agreed to remedy the situation immediately and to contact the agent as soon as the repairs were completed. Later that day, at approximately 6:15 p.m., the executive notified the Denver agents, by cellular telephone call, that the lock on the tower fence had been replaced.

4. On March 17, 2008, a Denver agent contacted the Greeley Broadcasting executive to obtain more information about recent access to the transmitter location. The executive admitted that he was unable to close the existing lock when he arrived at the transmitter site on March 14, 2008, to replace the device. When asked about recent site activity, the owner responded that he could not recall the date of his last visit to the site, but that he typically went there once a month to do work inside the building. On these occasions, he did not enter the fenced-in area around the tower base. Upon request, the owner provided the agent with the name of the engineers who had conducted work for the station on a contract basis.

5. On March 18, 2008, a Denver agent traveled to the KGRE-AM tower site and verified that the lock had been replaced with a functioning device.

6. On March 21, 2008, a Denver agent contacted all three engineers whose names had been provided by Greeley Broadcasting. Two of the engineers claimed they had not been to the site in three months or longer. The third engineer stated that he had been to the site approximately one week prior to the Denver agents' inspection on March 14, 2008. As with the two other contract engineers, this third engineer could not recall the last time he had entered the fenced enclosure.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁴

8. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁵ Individual tower fences need not be installed if the towers are contained within a protective property fence.⁶ In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."⁷

9. KGRE-AM broadcasts from a series-fed tower with an insulated base and, pursuant to

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 47 C.F.R. § 73.49.

⁶ 47 C.F.R. § 73.49.

⁷ *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("*Report and Order*").

Section 73.49, must be enclosed with an effective locked fence or other enclosure. The KGRE-AM tower is located adjacent to residential development and there is no other perimeter fencing to keep the public from approaching the structure. With no perimeter fence, the base fence around the individual AM tower must be effective.⁸ At the time of the March 14, 2008, inspection, the lock to the gated, fenced enclosure surrounding the KGRE-AM tower was found stuck in the unlocked position and the agents were unable to close it. An executive of Greeley Broadcasting admitted to experiencing the same difficulty when he inspected the lock later that day. With no working lock on the gate, the agents were able to easily access the base of the KGRE-AM tower, therefore, the fence surrounding the KGRE-AM tower was ineffective. Interviews conducted by the Denver agents revealed that no station employee or contractor had been to the KGRE-AM tower site for at least a week prior to the Denver agents' inspection, and of those that had visited KGRE-AM tower site in the last few months, none acknowledged checking the lock or the gate at the site.

10. Greeley Broadcasting was aware of the requirement to maintain an effective locked fence or enclosure surrounding the KGRE-AM tower, given the fact it had maintained locks for the KGRE-AM tower fence in the past. Therefore, its violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Greeley Broadcasting apparently willfully and repeatedly violated Section 73.49 of the Rules by failing to maintain the KGRE antenna structure within an effective enclosure.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to enclose the antenna structure within an effective locked fence or other enclosure is \$7,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Greeley Broadcasting is apparently liable for a \$7,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Greeley Broadcasting Corporation is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules.¹¹

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Greeley Broadcasting Corporation **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by

⁸ See *Butterfield Broadcasting Corporation*, 20 FCC Rcd 20237 (EB 2005).

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.49.

Federal Communications Commission

overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹² Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Greeley Broadcasting Corporation will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Denver District Office, 215 S. Wadsworth Boulevard, Suite 303, Lakewood, CO 80226 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Greeley Broadcasting Corporation.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears
District Director
Denver Office
Western Region
Enforcement Bureau

¹² See 47 C.F.R. § 1.1914.